

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHANNON D. WILMORE,
 Plaintiff(s),
 v.
 OPTUM SERVICES, INC.,
 Defendant(s).

Case No. 2:24-cv-01678-GMN-NJK

Order

[Docket No. 18]

Pending before the Court is Defendant's motion to stay discovery pending resolution of its motion to dismiss. Docket No. 18; *see also* Docket No. 7 (motion to dismiss). The motion to dismiss is fully briefed, but no response was filed to the motion to stay discovery.¹

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay of discovery bears the heavy burden of making a strong showing that discovery should be denied. *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). Discovery may be stayed when: (1) there is a pending motion that is potentially dispositive in scope and effect; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a "preliminary peek" at the merits of the underlying motion and is convinced that Plaintiff will be unable to state a claim for relief. *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

¹ The Court may take the lack of a filed response as consent to the granting of the motion, but it is not required to do so. *See* Local Rule 7-2(d).

1 The Court is not convinced that the motion to dismiss will prevail here. That motion is
2 seeking dismissal on the ground that the complaint was served less than three weeks after the Rule
3 4(m) deadline. Docket No. 7 at 2. The governing language in the rule does not require dismissal.
4 Fed. R. Civ. P. 4(m) (“If a defendant is not served within 90 days after the complaint is filed, the
5 court—on motion or on its own after notice to the plaintiff—must dismiss the action without
6 prejudice against that defendant or order that service be made within a specified time” (emphasis
7 added)). Courts have significant leeway to not dismiss for failing to comply with this deadline.
8 The Ninth Circuit has made plain that courts may extend the deadline retroactively and may
9 provide relief even without a showing of good cause for the delay. *United States v. 2,164 Watches,*
10 *More or Less Bearing a Registered Trademark of Guess?, Inc.*, 366 F.3d 767, 772 (9th Cir. 2004);
11 *see also, e.g., Wilson v. Ayers*, 2009 WL 1940102, at *1 (D. Nev. July 7, 2009). Particularly given
12 Plaintiff’s counsel’s stated health challenges, the merits of the motion to dismiss do not approach
13 the required showing of likely success to warrant a stay of discovery.²

14 Accordingly, the motion to stay discovery is **DENIED**. The parties must file a joint
15 proposed discovery plan by March 10, 2025.

16 IT IS SO ORDERED.

17 Dated: February 24, 2025

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Nancy J. Koppe
United States Magistrate Judge
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25 ² Conducting the preliminary peek puts the undersigned in an awkward position because
26 the assigned district judge will decide the motion to dismiss may have a different view of its merits.
27 *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that
28 motion is not intended to prejudice its outcome. *See id.* As a result, the undersigned will not
provide a lengthy discussion of the merits of the pending motion to dismiss in this instance.
Nonetheless, the undersigned has carefully reviewed the arguments presented in the underlying
motion and subsequent briefing.